

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----In the Matter of ----

PUBLIC UTILITIES COMMISSION

DOCKET NO. 05-0002

Instituting a Proceeding to Investigate
the Issues and Requirements Raised
by, and Contained in, Hawaii Revised
Statutes 486H, as Amended.

TESORO HAWAII CORPORATION'S STATEMENT
REGARDING THE AGGREGATED ETHANOL POOL PRICE

AND

CERTIFICATE OF SERVICE

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TESORO HAWAII CORPORATION'S STATEMENT
REGARDING THE AGGREGATED ETHANOL POOL PRICE

By letter dated April 3, 2006 ("Commission's Letter"), the Public Utilities Commission of the State of Hawaii ("Commission") required the Parties¹ to Docket No. 05-0002, *In the Matter of Pub. Util. Comm'n Instituting a Proceeding to Investigate the Issues and Requirements Raised by, and Contained in, Hawaii Revised Statutes Chapter 486H, as Amended*, to submit a written statement agreeing or disagreeing with certain provisos regarding ethanol. In fulfillment of the Commission's requirement, Tesoro Hawaii Corporation, a Hawaii corporation, respectfully submits this written statement ("Statement") that it does not object to the Commission's provisos as set forth below.

A. Background of the Ethanol Proceeding

1. Tesoro Hawaii's Participation

Hawaii's ethanol blending law requires "at least eighty-five per cent of all gasoline supplied to a retailer, sold at retail, or sold to a private, state, or municipal fleet for use in motor

¹ The parties to the proceeding are Chevron U.S.A. Inc., Tesoro Hawaii Corporation, Hawaii Petroleum Marketers Association, and Shell Oil Company. The Department of Commerce and Consumer Affairs, Division of Consumer Advocacy is a party to this proceeding by application of Hawaii Administrative Rules ("HAR") § 6-61-62.

vehicles, and intended as a final product for fueling motor vehicles in the State of Hawaii, shall contain ten percent ethanol by volume.”² The Ethanol Mandate went into effect on April 2, 2006. By Order No. 22056 filed on September 28, 2005 in Docket No. 05-0002, the Commission required the Parties to submit a proposal to adjust the HRS § 486H-13 wholesale gasoline price cap factors to include the addition of ethanol blending requirements.

Tesoro Hawaii provided the following documents in Docket No. 05-0002 under Protective Order No. 21669 (filed Mar. 1, 2005):

November 1, 2005	Tesoro Hawaii Corporation, Docket No.05-0002, Response to Order No. 22056
January 6, 2006	Tesoro Hawaii Corporation, Docket No. 05-0002, Confidential Responses to Public Utilities Commission Information Requests, PUC-IR-42 to PUC-IR-50
February 9, 2006	Tesoro Hawaii Corporation, Docket No. 05-0002, Confidential Responses to Public Utilities Commission Information Requests, PUC-IR-42 to PUC-IR-50 (Supplement)
March 3, 2006	Tesoro Hawaii Corporation, Presentation to the Hawaii Public Utilities Commission
March 8, 2006	Tesoro Hawaii Corporation, Docket No. 05-0002, Confidential Supplemental Responses to Public Utilities Commission Information Requests, PUC-IR-42 to PUC-IR-50; Ethanol Presentation
March 28, 2006	Tesoro Hawaii Corporation, Docket No. 05-0002; Comments to ICF Recommendations for the Ethanol Mandate
March 31, 2006	Tesoro Hawaii Corporation, Docket No. 05-0002; Supplemental Comments to ICF Recommendations for the Ethanol Mandate

2. Ethanol Pool Pricing Input and Confidentiality

On March 23, 2006, ICF Consulting, LLC (“ICF”), the Commission’s independent petroleum consultant, submitted *Recommendations to Modify Hawaii Revised Statutes Chapter*

² Haw. Admin. R. § 15-35-3 (2004); *see also* Haw. Rev. Stat. § 486J-10 (referred to herein as the “Ethanol Mandate”).

486H, Gasoline Price Cap Legislation, for the Ethanol Mandate, Hawaii Administrative Rules, Title 15, Chapter 35 (“ICF Recommendations”). A key feature of the ICF Recommendations is the use of an aggregated ethanol pool price as a component of the baseline price of E-10 gasoline. Additionally, by correspondence dated April 4, 2006, Commission counsel informed the Parties:

For purposes of providing a response to the...letter from the Commission, please assume that the ethanol pool price is a running aggregate of all ethanol imports and cargo-based resales, and that the ethanol pool price will be adjusted once per month, regardless of (a) the number of transactions that are reported for aggregation, and (b) the number of parties that participate in ethanol transactions.

The Commission’s Letter advises the Parties that in order to implement the ethanol pool price approach, the Commission intends to publish the industry aggregated pool price. The Commission also proposes to modify certain provisions of Protective Order No. 05-PO-12 and add a new Exhibit B, “Protective Agreement,” and Exhibit C, “Agreement of Non-Confidentiality as to the Industry Ethanol Pool Price.” The Commission posits that it may be unable to adopt the industry ethanol pool approach if any Party disagrees with the proposed amendments to the Protective Order, declines to execute Exhibit C, or otherwise disagrees that the Commission may publish the industry aggregated pool price.

The salient features of the Commission’s provisos are described below.

(1) Amendment of Protective Order No. 05-PO-12 (new provisions underlined):

1. This protective order governs the classification, acquisition, and use of Confidential Information produced by the Party pursuant to HRS Section 486H-13(m), HRS Chapter 486J, and HRS Chapter 125C. In addition, this protective order governs the classification, acquisition, and use of the ethanol transaction information submitted by the Party for purposes of calculating the industry ethanol pool price. This protective order does not govern the actual industry aggregated ethanol pool price,

which may be published by the Commission as a separate line item for the baseline price of E-10 gasoline in the Commission's weekly publication of maximum pre-tax wholesale price of gasoline, regardless of the number of transactions that are included or aggregated in such calculation. The execution of this stipulation shall not be deemed a waiver of any legal rights or privileges, or of the right to contest the disclosure of any of the information requested.

- (2) Modification of Protective Order No. 05-PO-12 to include the following paragraph:

17A. Any confidential information obtained under this protective order may be used by the Department of Business, Economic Development and Tourism ["DBEDT"] and the [state] petroleum commissioner ["SPC"], their staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Department of Business, Economic Development and Tourism, as qualified persons under this protective order, where the intended use of such confidential information is for the purpose of assisting said qualified persons in fulfilling their statutory duties and responsibilities under Chapters 486J and 125C, as amended. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

- (3) Addition of a new Exhibit B to contain the language of the current Exhibit A, "Protective Agreement," modified as appropriate to reflect the above changes; modification of Paragraph 14 of Protective Order No. 05-PO-12, "Procedures for Obtaining Access," to reflect the modifications above.
- (4) Addition of a new Exhibit C, "Agreement of Non-Confidentiality" requiring all Parties to agree that the actual industry aggregated ethanol pool price is not confidential and may be published by the Commission.

B. Tesoro Hawaii's Position

Tesoro Hawaii does not object to the provisos in the Commission's Letter, as clarified by Commission counsel's correspondence of April 4, 2006. Specifically, the Company does not object to the proposed amendment to Protective Order No. 05-PO-12 and does not otherwise disagree that the Commission may publish the industry aggregated ethanol pool price as part of

the Commission's active implementation, supervision, and compliance with the Ethanol Mandate and gasoline wholesale price cap law.³ The Company's express understanding in not objecting to the Commission's provisos, however, is that classification, acquisition and use of the ethanol transaction information submitted by Tesoro Hawaii for purposes of calculating the industry ethanol pool price *will remain confidential and shall be governed by Protective Order No. 05-PO-12*.

In accepting the Commission's provisos, Tesoro Hawaii relies upon the Commission's assurance that the Parties should assume that the ethanol pool price is a running aggregate of all ethanol imports and cargo-based resales, and that the ethanol pool price will be adjusted once per month, regardless of (a) the number of transactions that are reported for aggregation, and (b) the number of parties that participate in ethanol transactions.


Tesoro Hawaii observes that the Commission's Letter requires "all Parties who engage in 'cargo-based resales'" to execute Exhibit C. The ICF Recommendations, at page 22, state: "If the Commission endorses the ICF proposed ethanol pool price process or the alternative proposed below, it will be essential that information be gathered as soon as possible on *both imported ethanol cargoes and 'cargo-based' resale transactions*." (Emphasis added.) Likewise, the correspondence from Commission counsel on April 4, 2006, clarifies that the ethanol pool price will be a running aggregate of all ethanol imports and cargo-based resales. Therefore, Tesoro Hawaii's position is founded on the proposition that *all* importers (whether they resell or use the entirety of a cargo themselves) as well as wholesale resellers of ethanol as defined in the ICF Recommendations and subject to the jurisdiction of the Commission, will be required to execute Exhibit C and participate in the ethanol pricing pool. Also, Tesoro Hawaii expects that

³ Act 242, Session Laws of Hawaii 2004 ("Act 242"). The Act 242 provisions subject to the Commission's gasoline price cap authority have been codified under Hawaii Revised Statutes, section 486H, primarily section 486H-13.

all Qualified Persons described in the amended Protective Order No. 05-PO-12 will execute Exhibit B, prior to being permitted to obtain access to confidential information.

Tesoro Hawaii respectfully reserves the right to suspend its provision of information, to contest any action, and to seek appropriate remedy if it concludes that such provision or action may cause the Company to violate Federal and/or State laws, including but not limited to antitrust laws.

DATED: Honolulu, Hawaii, April 5, 2006.

By: 
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TESORO HAWAII CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing upon the following parties by mail, postage prepaid and properly addressed.

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Dated: April 5, 2006.


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